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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No.

2012-123

12 **NANCY JEAN BAUER-SMITH**
1954 Greenfield
13 Clovis, CA 93619
14 **Registered Nurse License No. 455470**

A C C U S A T I O N

15 Respondent.

16 Complainant alleges;

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),
20 Department of Consumer Affairs.

21 2. On or about August 31, 1990, the Board issued Registered Nurse License Number
22 455470 to Nancy Jean Bauer-Smith ("Respondent"). Respondent's registered nurse license was in
23 full force and effect at all times relevant to the charges brought herein and will expire on August
24 31, 2012, unless renewed.

25 **STATUTORY PROVISIONS**

26 3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that
27 the Board may discipline any licensee, including a licensee holding a temporary or an inactive

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1 license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing
2 Practice Act.

3 4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not
4 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
5 to render a decision imposing discipline on the license. Under Code section 2811, subdivision
6 (b), the Board may renew an expired license at any time within eight years after the expiration.

7 5. Code section 2761 states, in pertinent part:

8 The board may take disciplinary action against a certified or licensed
9 nurse or deny an application for a certificate or license for any of the following:

10 (a) Unprofessional conduct . . .

11

12 (f) Conviction of a felony or of any offense substantially related to the
13 qualifications, functions, and duties of a registered nurse, in which event the record of
14 the conviction shall be conclusive evidence thereof . . .

15 6. Code section 2762 states, in pertinent part:

16 In addition to other acts constituting unprofessional conduct within the
17 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
18 person licensed under this chapter to do any of the following:

19 (a) Obtain or possess in violation of law, or prescribe, or except as
20 directed by a licensed physician and surgeon, dentist, or podiatrist administer to
21 himself or herself, or furnish or administer to another, any controlled substance as
22 defined in Division 10 (commencing with Section 11000) of the Health and Safety
23 Code or any dangerous drug or dangerous device as defined in Section 4022.

24

25 (c) Be convicted of a criminal offense involving the prescription,
26 consumption, or self administration of any of the substances described in subdivisions
27 (a) and (b) of this section, or the possession of, or falsification of a record pertaining
28 to, the substances described in subdivision (a) of this section, in which event the
record of the conviction is conclusive evidence thereof . . .

7. Code section 2765 states:

A plea or verdict of guilty or a conviction following a plea of nolo
contendere made to a charge substantially related to the qualifications, functions and
duties of a registered nurse is deemed to be a conviction within the meaning of this
article. The board may order the license or certificate suspended or revoked, or may
decline to issue a license or certificate, when the time for appeal has elapsed, or the
judgment of conviction has been affirmed on appeal or when an order granting
probation is made suspending the imposition of sentence, irrespective of a subsequent

1 order under the provisions of Section 1203.4 of the Penal Code allowing such person
2 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside
the verdict of guilty, or dismissing the accusation, information or indictment.

3 8. Code section 2770.11 states:

4 (a) Each registered nurse who requests participation in a diversion
5 program shall agree to cooperate with the rehabilitation program designed by a
6 committee. Any failure to comply with the provisions of a rehabilitation program
7 may result in termination of the registered nurse's participation in a program. The
name and license number of a registered nurse who is terminated for any reason,
other than successful completion, shall be reported to the board's enforcement
program.

8 (b) If a committee determines that a registered nurse, who is denied
9 admission into the program or terminated from the program, presents a threat to the
10 public or his or her own health and safety, the committee shall report the name and
11 license number, along with a copy of all diversion records for that registered nurse, to
the board's enforcement program. The board may use any of the records it receives
under this subdivision in any disciplinary proceeding.

12 9. Code section 4324, subdivision (a), states:

13 Every person who signs the name of another, or of a fictitious person, or
14 falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine,
15 any prescription for any drugs is guilty of forgery and upon conviction thereof shall
be punished by imprisonment in the state prison, or by imprisonment in the county
jail for not more than one year.

16 10. Health and Safety Code section 11173, subdivision (a), states, in pertinent part, that
17 "[n]o person shall obtain or attempt to obtain controlled substances, or procure or attempt to
18 procure the administration of or prescription for controlled substances, (1) by fraud, deceit,
19 misrepresentation, or subterfuge . . ."

20 COST RECOVERY

21 11. Code section 125.3 provides, in pertinent part, that the Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case.

25 CONTROLLED SUBSTANCE

26 12. "Norco", a brand of hydrocodone bitartrate and acetaminophen, is a Schedule III
27 controlled substance as designated by Health and Safety Code section 11056, subdivision (e)(4).

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**RESPONDENT'S TERMINATION FROM BOARD'S
DIVERSION PROGRAM AS A PUBLIC SAFETY RISK**

13. On or about September 25, 2007, Respondent was enrolled in the Board's Diversion Program. On or about September 1, 2010, the Diversion Evaluation Committee terminated Respondent from the Diversion Program as a public safety risk due to her failure to comply with provisions of her rehabilitation plan and her third major relapse from her sobriety, in addition to other risk concerns.

FIRST CAUSE FOR DISCIPLINE

(Criminal Conviction)

14. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (f), in that on or about May 19, 2008, in the criminal proceeding titled *People v. Nancy Bauer-Smith* (Super. Ct. Del Norte County, 2008, Case No. CR-F-08-0009134), Respondent pled guilty to violating Penal Code section 470, subdivision (b) (forgery, a misdemeanor), a crime substantially related to the qualifications, functions, and duties of a registered nurse. The imposition of Respondent's sentence was suspended and Respondent was placed on summary probation for 3 years on terms and conditions, including that Respondent successfully complete the Board's diversion program. The circumstances of the crime are set forth in paragraph 15 below.

SECOND CAUSE FOR DISCIPLINE

(Diversion of Controlled Substances)

15. Respondent is subject to disciplinary action pursuant to Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762, subdivision (a), in that while employed as a registered nurse at Pelican Bay Hospital located in Crescent City, California, Respondent obtained the controlled substance Norco by fraud, deceit, misrepresentation, or subterfuge, in violation of Health and Safety Code section 11173, subdivision (a), as follows: On or about June 5, 2007, Respondent signed out an unknown quantity of Norco from the hospital supply using another staff member's name on the record to obtain the medication for her own use.

1 THIRD CAUSE FOR DISCIPLINE

2 (Conviction Related to the Falsification of a Record

3 Pertaining to Controlled Substances)

4 16. Respondent is subject to disciplinary action pursuant to Code section 2761,
5 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
6 subdivision (c), in that on or about May 19, 2008, Respondent was convicted of a criminal
7 offense involving the falsification of a record pertaining to controlled substances, as set forth in
8 paragraphs 14 and 15 above.

9 PRAYER

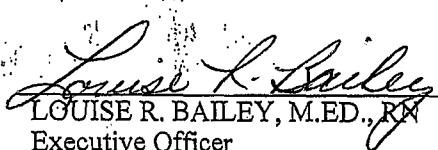
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Board of Registered Nursing issue a decision:

12 1. Revoking or suspending Registered Nurse License Number 455470, issued to Nancy
13 Jean Bauer-Smith;

14 2. Ordering Nancy Jean Bauer-Smith to pay the Board of Registered Nursing the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.

18
19 DATED: August 18, 2011


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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